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13 UNITED STATES BANKRUPTCY COURT

14 EASTERN DISTRICT OF CALIFORNIA

15 FRESNO DIVISION

16 In re:) Case No. 10-10843-B-13
 17 ANETTE FREELING and JAMES) Chapter 13
 18 FREELING,) DC No. UST-5
 19) Date: January 5, 2011
 20) Time: 1:00 p.m.
 21) Place: U.S. Bankruptcy Court
 22) 1300 18TH Street, Suite A
 23) Bakersfield, California
 24) Judge: W. Richard Lee
 25)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING
 UNITED STATES TRUSTEE'S MOTION FOR AN ORDER
 IMPOSING A FINE AND DISGORGEMENT PURSUANT TO 11 U.S.C. § 110(l)**

26 On January 5, 2011, the Court considered the United States Trustee's Motion for An
 27 Order Imposing a Fine and Disgorgement Pursuant to 11 U.S.C. § 110(l). Mark L. Pope, Esq.
 28 appeared for the United States Trustee. Anette Freeling, appeared *in propria persona*. Having
 reviewed the pleadings and considered the arguments of the parties, the Court now issues the
 following findings of fact and conclusions of law.

Findings of Fact

29 1. On January 29, 2010, Anette and James Freeling ("the Debtors") filed a voluntary
 30 petition under chapter 13. There was no indication the Debtors were represented by counsel
 31

1 when they filed and there was no indication on their petition they were assisted by a
2 bankruptcy petition preparer.

3 2. There was no disclosure of attorney or petition preparer compensation filed in the
4 case as required by Bankruptcy Rule 2016(b) and 11 U.S.C. 110(h)(2)(A).

5 3. On March 31, 2010, the Debtors appeared and testified under oath at their meeting
6 of creditors.

7 4. The Debtors' bankruptcy documents were prepared by My Finance 911 ("the
8 Preparer") to which the Debtors paid \$1,200 for bankruptcy preparation services.

9 5. The Preparer instructed the Debtors they would need an attorney and referred them
10 to Louisa Moritz, Esq. of Ventura, California.

11 6. The Debtors paid Louisa Moritz \$1,000 for bankruptcy representation, including
12 court attendance.

13 7. On the morning of the Debtors' scheduled meeting of creditors, Louisa Moritz's
14 secretary called and informed them that Lousia Moritz would not be coming to their meeting.

Conclusions of Law

15 8. The United States Trustee is statutorily obligated to monitor the administration of
16 cases commenced under chapter 7, 11, 12 and 13 of the Bankruptcy Code. 28 U.S.C. §
17 586(a)(3). The United States Trustee has standing to raise, and to appear and be heard on, any
18 issue in any bankruptcy case or proceeding. 11 U.S.C. § 307. The United States Trustee may
19 file a motion for an order imposing a fine on a bankruptcy petition preparer for any violation of
20 section 110 of the Bankruptcy Code. 11 U.S.C. § 110(l)(3).

21 9. The Preparer is a bankruptcy petition preparer. Section 110 of the Bankruptcy Code
22 provides in relevant part:

23 (1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor
24 or an employee of such attorney, who prepares for compensation a document for
25 filing; and
26 (2) "document for filing" means a petition or any other document prepared for filing by
27 a debtor in a United States bankruptcy court or a United States District court in
28 connection with a case under this title.

1 11 U.S.C. § 110(a)(1) and (2).

2 10. The Preparer is not an attorney. It prepared the petition for a fee for filing with
3 the Court in this case. It was paid \$1,200 for its petition preparer services.

4 11. The Preparer should be fined. Section 110 of the Bankruptcy Code provides in
5 relevant part:

6 (l)(1) A bankruptcy petition preparer who fails to comply with any provision of
7 subsection(b),(c),(d),(e),(f),(g) or (h) may be fined not more than \$500 for each such
8 failure
11 U.S.C. § 110(l)(1).

9 The Preparer failed to comply with subsections (b), (c), (e), and (h) of Section 110, as
10 described below, and should be fined for each such failure.

11 12. Section 110 of the Bankruptcy Code provides in relevant part:

12 (b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the
13 document and print on the document the preparer's name and address. If a
14 bankruptcy petition preparer is not an individual, then an officer, principal,
15 responsible person, or partner of the bankruptcy petition preparer shall be
16 required to -
17 (A) sign the document for filing; and
18 (B) print on the document the name and address of that officer, principal,
19 responsible person, or partner.
11 U.S.C. § 110(b)(1)(A)-(B).

20 The Preparer did not sign or print its name on the petition it prepared for filing with the court.

21 The Petition has a signature block which calls for a Non-attorney Petition Preparer to print
22 their name and address, place their Social Security number and sign as required by 11 U.S.C. §
23 110. The pre-printed signature block on the petition includes bold print language that
24 specifically references 11 U.S.C. § 110.

25 13. Therefore, the Preparer's failure to complete the signature blocks as a Non-
26 attorney Petition Preparer in this case can only be seen as wilful. The Preparer should be
27 fined \$500 for failing to sign and print its name and address on the petition.

28 14. Section 110 of the Bankruptcy Code provides in relevant part:

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on
the document, after the preparer's signature, an identifying number that identifies
the individuals who prepared the document.

1 (c)(2)(A) . . . [F]or purposes of this section, the identifying number of a bankruptcy
 2 petition preparer shall be the Social Security number of each individual who
 3 prepared the document or assisted in its preparation.

4 (c)(2)(B) If a bankruptcy petition preparer is not an individual, the identity number of
 5 the bankruptcy petition preparer shall be the Social Security account number
 6 of the bank officer, principal, responsible person, or partner of the bankruptcy
 7 petition preparer.

8 11 U.S.C. §§ 110(c)(1) and (2)(A)-(B).

9 The Preparer failed to place its Social Security number on the petition. It should be fined \$500
 10 for failing to do so.

11 15. Section 110 of the Bankruptcy Code provides in relevant part:

12 (b)(2)(A) Before preparing any document for filing or accepting any fees from a debtor,
 13 a bankruptcy petition preparer shall provide the debtor a written notice which
 14 shall be written on an official form prescribed by the Judicial Conference of
 15 the United States . . .

16 (B) The notice under subparagraph (A) -

- 17 (i) shall inform the debtor in simple language that a bankruptcy petition
 18 preparer is not an attorney and may not practice law or give legal advice;
- 19 (ii) may contain a description of examples of legal advice that a bankruptcy
 20 petition preparer is not authorized to give . . .; and
- 21 (iii) shall-
 - 22 (I) be signed by the debtor and, under penalty of perjury, by the bankruptcy
 23 petition preparer; and
 - 24 (II) be filed with any document for filing.

25 11 U.S.C. §§ 110(c)(2)(A) and (B).

26 The Judicial Conference of the United States has prescribed an Official Form to allow a

27 bankruptcy petition preparer to provide the referenced notice i.e., Official Form 19 -

28 Declaration and Signature of Non-Attorney Petition Preparer. The Preparer did not provide

the Debtors with such a notice and it was not filed with the court. The Preparer should be

29 fined \$500 for such failure.

30 16. Section 110 of the Bankruptcy Code provides in relevant part:

31 (e)(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor
 32 any legal advice, including any legal advice described in subparagraph (B).

33 (B) The legal advice referred to in subparagraph (A) includes advising the debtor
 34 . . .(vii) concerning bankruptcy procedure and rights.

35 11 U.S.C. § 110(e)(2)(A).

36 The Preparer gave the Debtors legal advice on bankruptcy rights and procedures including how
 37 to file a chapter 13 petition. It should be fined \$500 for so doing.

1 17. Section 110 of the Bankruptcy Code provides in relevant part:
2 (h)(2)(A) A declaration under penalty of perjury by the bankruptcy petition preparer
3 shall be filed together with the petition, disclosing any fee received from or
4 on behalf of the debtor within 12 months immediately prior to the filing of
5 the case
6 11 U.S.C. § 110(h)(2)(A).

7 The Preparer failed to file a declaration disclosing the \$1,200 fee it received from Debtors for
8 preparing the bankruptcy documents. It should be fined \$500 for such failure.

9 18. Section 110 of the Bankruptcy Code provides in relevant part:
10 (h)(3)(A) The Court shall disallow and order the immediate turnover to the bankruptcy
11 trustee any fee referred to in paragraph 2 found to be in excess of the value of
12 the services -
13 (i) rendered by the bankruptcy petition preparer during the 12-month
14 period immediately preceding the filing of the petition
15 (h)(3)(B) All fees charged by a bankruptcy petition preparer may be forfeited in any
16 case in which the bankruptcy petition preparer fails to comply with this
17 subsection or subsections (b), (c), (d), (e), (f), or (g).
18 11 U.S.C. §§ 110(h)(2)(A).

19 The Preparer failed to comply with subsections (b), (c), (e), and (h). Therefore, its \$1,200 fee
20 should be ordered forfeited and returned to the Debtors. In the alternative, the fee of \$1,200
21 which the Preparer received exceeds this Court's Guidelines to Petition Preparers in Eastern
22 District of California Cases ("Guidelines") which provide in pertinent part:

23 The fee paid by the debtor to a bankruptcy petition preparer for typing and filing a
24 bankruptcy petition may not exceed \$125.00 including expenses (such as photocopies,
25 postage, telephone charges and courier services).
26 Guidelines, para. 2.

27 Therefore, the entire fee of \$1,200 should be ordered disgorged to the Debtors.

28 19. Section 110 of the Bankruptcy Code provides in relevant part:
29 (l)(2) The court shall triple the amount of a fine assessed under paragraph (1) in any
30 case in which the court finds that a bankruptcy petition preparer
31 (D) prepared a document for filing in a manner that failed to disclose the identity
32 of the petition preparer.
33 11 U.S.C. § 110(l)(2)(D).

34 The Preparer prepared the Debtors' petition in a manner that failed to disclose the Preparer's
35 identity. It should be fined in the total amount of \$2,500, as set forth above, and a fine in that

1 amount, if imposed, must be tripled to \$7,500. The fine should be paid to the United States
2 Trustee. 11 U.S.C. § 110(l)(4)(A).

3 **Conclusion**

4 For the foregoing reasons, the Court concludes the following relief should be granted:

5 1. The Preparer will be ordered to disgorge its fee of \$1,200 to Annette Freeling and
6 James Freeling, and provide proof thereof to the United States Trustee, by making payment in
7 that amount by cashier's check or money order and mailing the payment within 30 days from
8 the date of this Order to James and Annette Freeling, 9532 Tahiti Avenue, Bakersfield,
9 California 93311; and

10 2. The Preparer will be fined in the amount of \$7,500 payable to the United States
11 Trustee within 60 days from the date of this Order

12 A separate order shall be entered.

13 3. The fee disgorgement to the Debtors shall be satisfied
14 before the fine is paid to the US Trustee.

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20 **Dated:** February 25, 2011

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23 
24 **W. Richard Lee**
25 **United States Bankruptcy Judge**

26 E-filed by Mark L. Pope
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